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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/570,122

02/28/2006

Christine Power

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EXAMINER

DEBERRY, REGINA M

ART UNIT

PAPER NUMBER

1647

MAIL DATE

DELIVERY MODE

02/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/570,122	Applicant(s) POWER ET AL.	
	Examiner Regina M. DeBerry	Art Unit 1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-50,55 and 57-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-50,55 and 57-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/2/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Status of Application, Amendments and/or Claims

The amendment and Applicant's arguments, filed 02 December 2008, have been entered in full. Claims 1-45, 51-54 and 56 are canceled. New claim 60 was added. Claims 46-50, 55, 57-60 are under examination.

The specification is in compliance with 37 CFR 1.821-1.825 of the Sequence Rules and Regulations.

Information Disclosure Statement

The information disclosure statement(s) (IDS) (filed 02 December 2008) was received and complies with the provisions of 37 CFR §§1.97 and 1.98. It has been placed in the application file and the information referred to therein has been considered as to the merits.

Withdrawn Objections And/Or Rejections

The objection to the disclosure, as set forth at page 4 of the previous Office Action (02 September 2008), is *withdrawn* in view of the amendment (02 December 2008).

The rejection to claims 46-53, 55, 57-59 under 35 U.S.C. 112, first paragraph, enablement, as set forth at pages 4-7 of the previous Office Action (02 September 2008), is *withdrawn* in view of Applicant's arguments and the amendment (02 December 2008).

The rejection to claims 46-53, 55, 57-59 under 35 U.S.C. 112, first paragraph, written description requirement, as set forth at pages 7-9 of the previous Office Action (02 September 2008), is *withdrawn* in view of the amendment (02 December 2008).

The rejection to claims 46-53, 55, 57-59 under 35 U.S.C. 112, second paragraph, as set forth at pages 9-10 of the previous Office Action (02 September 2008), is *withdrawn* in view of the amendment (02 December 2008).

The claims to 46-53 and 55 under 35 U.S.C. 102(e) as being anticipated by Mintz et al., United States Patent Application Publication US 2007/0083334 A1, as set forth at pages 10-11 of the previous Office Action (02 September 2008), is *withdrawn* in view of Applicant's arguments and the amendment (02 December 2008).

The objection to claims 46, 49-52, as set forth at page 11 of the previous Office Action (02 September 2008), is *withdrawn* in view of the amendment (02 December 2008).

Claim Rejections - 35 USC § 102(e)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 46-50, 55, 57-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Tang et al. (reference submitted by Applicant; WO 02/074961 A1).

Tang et al. teach a polypeptide that is 100% identical to instant SEQ ID NO:2. Tang et al. teach methods for treating medical conditions which comprises the step of administering to a mammalian subject a therapeutically effective amount of a composition comprising a polypeptide of the present invention and a pharmaceutically acceptable carrier (page 5, lines 18-

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21; page 34, lines 19-21 and page 76, lines 11-30). Tang et al. teach that a composition of the present invention is useful for treatment of lung or liver fibrosis (page 55, lines 24-26). Tang et al. teach that if the protein is made in yeast or bacteria, it may be necessary to modify the protein produced therein, for example by phosphorylation or glycosylation of the appropriate sites, in order to obtain the functional protein. Such covalent attachments may be accomplished using known chemical or enzymatic methods (page 31, lines 27-31). Tang et al. teach fusion proteins of the instant invention (page 21, lines 17-20; page 38, lines 1-10; page 39, line 20-page 41, line 5). Tang et al. teach that the fusion protein can be an immunoglobulin fusion protein in which the polypeptide sequences according to the invention comprise one or more domains fused to sequences derived from a member of the immunoglobulin protein family (page 40, lines 7-11). Tang et al. teach that the proteins may be fused to cytokines alpha or beta interferon (page 39, lines 30-31). Tang et al. teach that it is contemplated that interferons may be administered in combination with the polypeptide of the invention (page 77, lines 13-21). Tang et al. teach that the polypeptide and exogenous factors may be administered simultaneously, sequentially or separately (pages 77-79 and 85).

Conclusion

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (571) 272-0882. The examiner can normally be reached on 9:00 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manjunath N. Rao can be reached on (571) 272-0939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marianne P. Allen/
Primary Examiner, Art Unit 1647

/R. M. D./
Examiner, Art Unit 1647
2/15/09